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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

HPEV, INC., a Nevada corporation,

Plaintiff,

vs.

SPIRIT BEAR LIMITED, a Delaware corporation,

Defendant.

SPIRIT BEAR LIMITED, a Delaware corporation, on behalf of HPEV, INC., a Nevada corporation,

Third-Party Plaintiff,

vs.

TIMOTHY J. HASSETT, QUENTIN D. PONDER, JUDSON W. BIBB III, THEODORE H. BANZHAF, AND MARK M. HODOWANEC,

Third-Party Defendants,

and

HPEV, INC., a Nevada corporation,

Nominal Counterdefendant.

Docket No. 2:13-cv-01548-JAD-GWF

ORDER GRANTING [DKT. #148] SPIRIT BEAR'S EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION TO ENJOIN HPEV'S DECEMBER 10, 2014 SPECIAL SHAREHOLDER MEETING; AND DENYING AS MOOT [DKT. #147] SPIRIT BEAR'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER TO ENJOIN HPEV'S DECEMBER 10, 2014 SPECIAL SHAREHOLDER MEETING

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1 SPIRIT BEAR LIMITED, a Delaware
corporation,

2 Counterclaimant,

3 vs.

4 HPEV, INC., a Nevada corporation,

5 Counterdefendant.
6

7 HPEV, Inc. ("HPEV") and Spirit Bear Limited ("Spirit Bear") came before this Court on
8 December 5, 2014, at 2:30 p.m., on: (i) Spirit Bear's *Emergency* Motion for a Temporary
9 Restraining Order to Enjoin HPEV's December 10, 2014 Special Shareholder Meeting [Dkt. # 147];
10 and (2) Spirit Bear's *Emergency* Motion for a Preliminary Injunction to Enjoin HPEV's
11 December 10, 2014 Special Shareholder Meeting [Dkt. # 148].

12 APPEARANCES

- 13 ➤ Joseph Liebman, Esq. of Bailey❖Kennedy on behalf of Spirit Bear.
- 14 ➤ Mark Dzarnoski, Esq. of Gordon Silver on behalf of HPEV.

15 ORDER

16 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
17 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
18 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v.*
19 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted); *see also Am. Trucking*
20 *Ass'ns, Inc. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009) (citing these elements).

21 The Court finds that Spirit Bear is likely to succeed on the merits of its claim that HPEV is
22 currently in violation of Article III, Section 17 of HPEV's bylaws, which states that "Spirit Bear
23 Limited shall have the right to nominate half of the members of the Board, which shall consist of an
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1 even number of directors.” HPEV noticed a December 10, 2014, Special Shareholder Meeting
2 without providing Spirit Bear with its right to “nominate half of the members of the Board.”¹

3 The Court finds that Spirit Bear is likely to suffer irreparable harm if the December 10, 2014,
4 Special Shareholder Meeting is allowed to proceed as currently noticed, because Spirit Bear will be
5 frustrated in its attempt to obtain representation on the HPEV Board of Directors. *See, e.g., Int’l*
6 *Banknote Co., Inc. v. Muller*, 713 F. Supp. 612, 623 (S.D.N.Y. 1989); *Treco, Inc. v. Land of Lincoln*
7 *Sav. & Loan*, 572 F. Supp. 1447, 1450 (N.D. Ill. 1983). The Court also finds that the balance of
8 equities tips in Spirit Bear’s favor because any harm HPEV may suffer from an enjoinder of the
9 December 10, 2014, Special Shareholder Meeting is the result of HPEV’s decision not to comply
10 with Article III, Section 17 of its bylaws. Finally, the Court finds that the public interest will be
11 served because public companies must be required to comply with corporate bylaws.

12 Accordingly, the Court, having examined memoranda of the parties and the records and
13 documents on file, and heard argument of counsel, **HEREBY ORDERS** that Spirit Bear’s
14 *Emergency Motion for a Preliminary Injunction to Enjoin HPEV’s December 10, 2014 Special*
15 *Shareholder Meeting [Dkt. # 148]* is GRANTED. HPEV is enjoined from going forward with the
16 December 10, 2014, Special Shareholder Meeting because it failed to comply with Article III,
17 Section 17 of HPEV’s bylaws. Spirit Bear shall post a \$500.00 bond with the Clerk of Court as
18 security for the injunction.

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25 ¹ In the interests of clarity going forward, the Court finds that the process under Article III, Section 17 of HPEV’s
26 bylaws should begin with HPEV serving a written request on Spirit Bear, and any response from Spirit Bear must be
27 provided within ten business days.

1 The Court **FURTHER ORDERS** that Spirit Bear's *Emergency* Motion for a Temporary
2 Restraining Order to Enjoin HPEV's December 10, 2014 Special Shareholder Meeting [Dkt. # 147]
3 is DENIED AS MOOT.

4
5 **ORDER**

6 IT IS SO ORDERED.

7 DATED: December 9, 2014

8
9 
10 UNITED STATES DISTRICT JUDGE

11
12 Submitted by:

13 BAILEY ♦ KENNEDY

14
15 By: /s/ Joseph A. Liebman

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